

## Department of Veterans Affairs

## §21.7636

forfeit his or her educational assistance due to treasonable acts or subversive activities, the date of discontinuance of payment of educational assistance will be the later of—

(1) The effective date of the award, or

(2) The day before the date the reservist committed the treasonable act or subversive activities for which he or she was convicted.

(Authority: 38 U.S.C. 6104, 6105; Pub. L. 98-525)

(u) *Change in law or VA issue or interpretation.* If there is a change in applicable law or VA issue, or in the Department of Veterans Affairs's application of the law or VA issue, VA will use the provisions of §3.114(b) of this chapter to determine the date of discontinuance of the reservist's educational assistance.

(Authority: 38 U.S.C. 5112, 5113; Pub. L. 98-525)

(v) *Independent study course loses accreditation.* If the reservist is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency, unless the provisions of §21.7620 (c)(3) or (c)(4) apply.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3680A(a)(4))

(w) [Reserved]

(x) *Reduction following loss of increase ("kicker").* If a reservist is entitled to an increase ("kicker") in the monthly rate of basic educational assistance as provided in §21.7636(b) and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date, as determined by the Secretary of the military department concerned, that the reservist is no longer entitled to the increase ("kicker").

(Authority: 10 U.S.C. 16131)

(y) *Election to receive educational assistance under 38 U.S.C. chapter 30.* VA shall terminate educational assistance effective the first date for which the re-

servist received educational assistance when—

(1) The service that formed a basis for establishing eligibility for educational assistance under 10 U.S.C. chapter 1606 included a period of active duty as described in §21.7020(b)(1)(iv); and

(2) The reservist subsequently made an election, as described in §21.7042(a)(7) or (b)(10), to become entitled to basic educational assistance under 38 U.S.C. chapter 30.

(Authority: Sec. 107, Pub. L. 104-275, 110 Stat. 3329-3330)

(z) *Except as otherwise provided.* If the reservist's educational assistance must be discontinued for any reason other than those stated in the other paragraphs of this section, VA will determine the date of discontinuance of payment of educational assistance on the basis of facts found.

(Authority: 38 U.S.C. 5112(a), 5113; Pub. L. 98-525)

[53 FR 34740, Sept. 8, 1988, as amended at 57 FR 57106, Dec. 3, 1992; 58 FR 51783, Oct. 5, 1993; 61 FR 29304, June 10, 1996; 62 FR 55520, Oct. 27, 1997; 63 FR 35837, July 1, 1998; 65 FR 5788, Feb. 7, 2000; 65 FR 61101, Oct. 16, 2000; 66 FR 38939, July 26, 2001; 72 FR 39563, July 19, 2007]

### §21.7636 Rates of payment.

(a) *Monthly rate of educational assistance.* (1) Except as otherwise provided in this section or in §21.7639, basic educational assistance is payable at the following monthly rates.

(i) For training that occurs after September 30, 2004, and before October 1, 2005:

Training	Monthly rate
Full time .....	\$288.00
¾ time .....	216.00
½ time .....	143.00
¼ time .....	72.00

(ii) For training that occurs after September 30, 2005:

Training	Monthly rate
Full time .....	\$297.00
¾ time .....	222.00
½ time .....	147.00
¼ time .....	74.25

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(2)(i) The monthly rate of basic educational assistance payable to a reservist for apprenticeship or other on-the-job training full time is payable at the following rates.

(A) For training which occurs after September 30, 2004, and before October 1, 2005:

Training	Monthly rate
First 6 months of pursuit of training .....	\$216.00
Second 6 months of pursuit of training .....	158.40
Remaining pursuit of training .....	100.80

(B) For training which occurs after September 30, 2005:

Training	Monthly rate
First 6 months of pursuit of training .....	\$252.45
Second 6 months of pursuit of training .....	193.05
Remaining pursuit of training .....	133.65

(ii) Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

(3) The monthly rate of basic educational assistance payable to a reservist for pursuit of a cooperative course is as follows:

(i) For full-time training that occurs after September 30, 2004, and before October 1, 2005, the rate payable is the rate stated in paragraph (a)(1)(i) of this section.

(ii) For full-time training that occurs after September 30, 2005, the rate payable is the rate stated in paragraph (a)(1)(ii) of this section.

(Authority: 10 U.S.C. 16131(b), (c); sec. 8203(b), Pub. L. 105–178, 112 Stat. 493–494)

(b) *Increase (“kicker”) in educational assistance rates.* (1) The Secretary of the military department concerned may increase the amount of educational assistance stated in paragraph (a) of this section that is payable to a reservist who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel.

(2) The Secretary of the military department concerned—

(i) Will set the amount of the increase (“kicker”) for full-time training, but the increase (“kicker”) may not exceed \$350 per month; and

(ii) May set the amount of the increase (“kicker”) payable, for a reservist pursuing a program of education less than full time or pursuing an apprenticeship or other on-the-job training, at an amount less than the amount described in paragraph (b)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(1))

(c) *Limitations on payments.* VA may withhold final payment until VA receives proof of the reservist’s enrollment and adjusts the reservist’s account.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(g))

[61 FR 29305, June 10, 1996, as amended at 62 FR 27964, May 22, 1997; 62 FR 55520, Oct. 27, 1997; 62 FR 66278, Dec. 18, 1997; 64 FR 26297, May 14, 1999; 65 FR 59127, Oct. 4, 2000; 65 FR 60499, Oct. 11, 2000; 66 FR 38937, July 26, 2001; 67 FR 6655, Feb. 13, 2002; 68 FR 42978, July 21, 2003; 69 FR 62205, Oct. 25, 2004; 72 FR 39563, July 19, 2007]

### § 21.7639 Conditions which result in reduced rates or no payment.

The payment of educational assistance at the monthly rates established in § 21.7636 shall be subject to reduction, whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* (1) Withdrawal from a course or receipt of a nonpunitive grade affects payments to a reservist. VA will not pay benefits to a reservist for pursuit of a course from which the reservist withdraws or receives a nonpunitive grade which is not used in computing requirements for graduation unless the provisions of this paragraph are met.

(i) The reservist withdraws because he or she is ordered to active duty; or

(ii) Both of the following exist.

(A) There are mitigating circumstances, and

(B) The reservist submits a description of the circumstances in writing to VA either within one year from the date VA notifies the reservist that he or she must submit the mitigating circumstances, or at a later date if the reservist is able to show good cause why